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LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 18th March 2015

No. 2498—li/l(SS)-43/2006-LESI—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 10th February 2015 in I.D.Case No. 11/2007 of the Presiding Officer, Industrial Tribunal, Rourkela to whom the industrial disputes between the Management of (1) Odisha State Road Transport, Corporation, Rourkela, (2) O.S.R.T.C., Bhubaneswar and their Workman Shri Judhistir Sahu, represented through State Transport Employees Union, Rourkela was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, ROURKELA

INDUSTRIAL DISPUTE CASE No. 11/2007

Dated the 10th February 2015

Present :

Smt. V. Jayashree,
Presiding Officer, Industrial Tribunal,
Rourkela.

Between :

- | | |
|--|-------------------------|
| 1. Dist. Transport Manager(A),
O.S.R.T.C., Rourkela. | .. 1st Party—Management |
| 2. Managing Director,
O.S.R.T.C., Paribahan Bhawan,
Bhubaneswar. | |

And

Shri Judhistir Sahu, represented General Secretary, State Transport Employees Union, O.S.R.T.C. Office, Sector-2, Rourkela, Dist. Sundargarh.	.. Second Party—Workman by
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Appearances :

For the 1st Parties	..	Shri H. P. Acharya, Advocate
For the Second Party	..	Shri R. K. Sahoo, Advocate

AWARD

The Government of Odisha in Labour & Employment Department in exercise of their powers conferred under sub-section (5) of Section 12 read with Clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 have referred the following dispute vide Order No. 3481 li/l(SS)-43-LE., dated the 7th April 2007 for adjudication as per Schedule below :

““Whether the action of the management of Odisha State Road Transport Corporation in retiring Shri Judhistir Sahu, Conductor, under the Voluntary Separation Scheme with effect from the 16th January 2004 and not paying him salary or the benefits of the said scheme till date, is legal and/or justified ? If not, to what relief Shri Sahu is entitled ?”

2. The 1st party management O.S.R.T.C. is a statutory Corporation established under Section 3 of the R.T.C. Act, 1950 and the service conditions of its employees are regulated by the O.S.R.T.C. Employees (Classification, Recruitment and Condition of Service) Regulation, 1978 in which the normal age of retirement was fixed at 58 years. The State Government in order to reduce the manpower in the Public Sector Undertaking in order to avoid expenditure towards establishment, introduced Voluntary Retirement Scheme in 1998 and Voluntary Separation Scheme in 2002, respectively. The O.S.R.T.C. being a public sector undertaking adopted the said scheme.

3. The 2nd party workman was appointed as a Conductor under the administrative control of O.S.R.T.C., Rourkela and retired on Voluntary Separation Scheme on the 16th January 2004 whose date of birth was on the 10th April 1951, so his actual date of retirement was on the 10th April 2009. It is the cases of the workman that the Voluntary Separation Scheme was introduced by the Government in Public Enterprises Department vide their Resolution No. 3160, dated the 21st September 2001 which the O.S.R.T.C. implemented in the establishment by circulating the scheme and inviting applications from their employees vide their letter No. 29898, dated the 22nd December 2001. The scheme had clarified that the employee is entitled to get 21 days emoluments for each completed year of service with gratuity and all other statutory dues payable to the employees as per rule of the undertaking. The C.M.D., O.S.R.T.C. being the competent authority reserves the right of acceptance or rejection of the application within 30 days of submission of the application and the application cannot be withdrawn after its acceptance and communicated by the competent authority to the concerned employee. Accordingly the 2nd party workman Judhistir Sahu, the Conductor applied for retirement under V.S.S. during the year, 2002 which was not accepted, as no sanction order was communicated to him within the period of 30 days. All of a sudden, he was retired from his service by the orders of the management on dated the 16th January 2004. It is also the case of the workman that as per the scheme the payment of *ex gratia*, gratuity, leave encashment and other

statutory dues shall be paid to the employees within 60 days of acceptance of the application by the competent authority. All the payments should be made at the time of separation of the service. But, the 2nd party workman Judhistir Sahu, Conductor who retired on dated the 16th January 2004 from service was not paid with any financial benefits as entitled to". During conciliation proceeding an reply to the stand taken by the S.T.E. Union in favour of the workman, the management had intimated in their letter on dated the 14th October 2005 that Shri Judhistir Sahu, Conductor has been retired under Voluntary Separation Scheme and that the said retirement is not illegal as the amount of Rs.1,66,906 up to dated the 16th January 2004 has been outstanding towards short-fall amount which has not yet been deposited by him for which Voluntary Separation Scheme dues could not be released. Since none has represented the M.D., O.S.R.T.C. in the conciliation proceeding fixed on various dates, the Conciliation Officer failed to make any amicable settlement despite all efforts made by him and as a result the conciliation ended in failure. As such the report was submitted to the Government accordingly.

4. The reference being made by the Government of Odisha, Labour & Employment Department on the Schedule as mentioned above, after being noticed, the 2nd party workman appeared and submitted his statement of claim submitting that the management did not abide by the condition mentioned in the Voluntary Separation Scheme. Although he had applied for retirement under V.S.S. during the year, 2002, it was not accepted as no sanction order was communicated to him within a period of 30 days .He was not given payment of *ex gratia* amount, gratuity, leave encashment and other statutory due which shall be paid to him within 60 days of acceptance of application by the competent authority which should have been paid at the time of sanction of service. Hence he demanded for continuation of service till clearance of the total amount as his application for Voluntary Separation Scheme was the conditional that the full amount will be paid from the date of retirement of service. As regards payment of recovery amount as claimed by the management, if any, should have been made during his period of service. Hence he prayed for cancellation of retirement order, continuance of service till clearance of the total amount.

5. The 1st party management No.1, appeared and filed written statement challenging the maintainability, admitting that the 2nd party workman was serving as Conductor under O.S.R.T.C. The 1st party has averred that the 2nd party workman was retired from service with effect from dated the 16th January 2004 on acceptance of the voluntary retirement application submitted by him. After acceptance was communicated, he was relieved from service, thereby the master servant relationship cease. So there is no question of reinstatement or continuation of service till the date of superannuation. The 1st party has admitted the V.S.S. was adopted by the Government of Odisha to allow the Corporation to retire its surplus staff to make the Corporation viable. After introduction of model Voluntary Retirement Scheme/Voluntary Separation Scheme the Corporation allowed 2,336 employees including the 2nd party. So the 2nd party now cannot challenge the legality of such retirement after he was relieved from service.

6. It is further averred that as per the model Voluntary Separation Scheme, the 2nd party is to get a sum of Rs. 1,61,000, but as per the provision of scheme the employee is to get his dues after

clearing the liability of Corporation. After due scrutiny it was found that before release of Rs. 1,61,000 payable to the 1st party, the Corporation is to get Rs. 1,66,906 towards shortfall of the amount during the continuance of 2nd party. So the 2nd party is not entitled to any due from the Corporation.

7. Further it is averred that as per the Voluntary Separation Scheme only 30 days is allowed to the applicant to withdraw his application. Since the master-service relationship continued till the date of his retirement and the 2nd party is relieved from service on dated the 14th January 2004, he is not entitled to continue in service till superannuation. Since he has submitted his application during 2002 and 30 days expired before dated the 16th January 2004 and he has not withdraw his application, he is not entitled to continue in service beyond dated the 16th January 2004.

8. It is submitted that the total grievance of 2nd party is centered around non-payment of arrear dues amount to Rs. 2,61,000, but as per other provision of VSS Scheme, the 2nd party is to clear up the dues of the Corporation before he receive the dues calculated under Voluntary Separation Scheme. So, as there was outstanding of Rs. 1,66,906, the 2nd party is not entitled to any other dues. Thus the claim of 2nd party having no merit is liable to be rejected.

9. In the written statement the 1st party No. 2 has averred that the VRS was adopted by Government of Odisha to allow the Corporation to retire it's surplus staffs to make the Corporation viable. After introduction of model Voluntary Retirement Scheme/Voluntary Separation Scheme, the Corporation allowed 2,336 employees including 2nd party. The 2nd party cannot challenge the legality/illegality of such retirement after he is relieved from service. It is averred that as per the model voluntary separation, the 2nd party is to get a sum of Rs.73,222, but as per the provision scheme the employee is to get his dues after clearing the liability of Corporation. After due scrutiny it was found that before release of Rs.73,222 payable to the 1st party, the Corporation is to get Rs. 1,66,906 towards shortfall of the amount during the continuance of 2nd party. So, the 2nd party is not entitled to any due from the Corporation .

10. It is averred that as per the Voluntary Separation Scheme only 30 days is allowed to the applicant to withdraw his application. Since the master-servant relationship continued till the date of his retirement and the 2nd party is relieved from service on dated the 14th January 2004, he is not entitled to continue in service till superannuation. Since he has submitted his application during 2002 and 30 days has expired before dated the 16th January 2004 and he has not withdrawn his application, he is not entitled to continue in service beyond dated the 16th January 2004. Again it is averred that the total grievance of 2nd party is centered around non-payment of arrear dues amounting to Rs. 734,22,00, but as per other provision of Voluntary Separation Scheme, the 2nd party is to clear up the dues of the Corporation before he receive the dues calculated under Voluntary Separation Scheme. So as there was outstanding of Rs. 1,66,906 the 2nd party is not entitled to any other dues.

11. From the statement of claim on behalf of the 2nd party workman and the written statement filed on behalf of the 1st party Nos. 1 and 2, following issues have emerged for consideration :—

- I. Whether the action of the management in retiring Shri Judhistir Sahu, Conductor under the Voluntary Separation Scheme with effect from dated the 16th January 2004 and not paying him salary or the benefits of the said Scheme till date is legal and/or justified ?
- II. If not, to what relief Shri Sahu is entitled ?

12. The 2nd party workman in support of his claim has been examined as W.W. 1 and has exhibited the documents like copy of relieved order vide Ext. 1, copy of appointment letter vide Ext. 2, and copy of model voluntary separation scheme vide Ext.3. In order to substantiate the action taken by the management one legal assistant, Shri Sudhakar Maharana has been examined as M.W. 1 and has also proved certain documents like Ext. A, copy of order No. 7510, Ext. B, copy of letter No. 3678, Ext. C copy of letter No. 5190, Ext. D, copy of letter No. 527, Ext. E, copy of letter No. 3020, Ext. F, copy of letter No. 4354, Ext. G, copy of letter No. 3803, Ext. H, copy of letter No. 660, Ext. J, copy of letter No. 2364, Ext. K, copy of letter No. 653, Ext. L, copy of letter No. 2848, Ext. M, copy of letter No. 8084, Ext. N, copy of letter No. 660, Ext. P, copy of letter No. 173, Ext. Q, copy of letter No. 155, Ext. R, copy of letter No. 156, Ext. S, copy of letter No. 174, Ext. T, copy of letter No. 1242, Ext. V, copy of letter No. 6978, Ext. W, copy of letter No. 855, Ext. Y, copy of letter No. 8526, Ext. Z copy of letter No. 418.

13. *Issue Nos. I & II* : Both the issues are taken up together since both are interlinked to each other to decide the dispute. The uncontroverted fact is that the 2nd party workman was serving as a Conductor under O.S.R.T.C. The Voluntary Separation Scheme was adopted by Government of Odisha to allow the Corporation to retire its surplus staff to make the Corporation viable. The claim of the workman as per Ext. 3, copy of model Voluntary Separation Scheme the eligible employees will have to offer in a prescribed format within the time prescribed and the decision of the competent authority regarding acceptance or rejection of the Voluntary Separation Scheme application shall be communicated to the employee within 30 days of the submission of the application. The benefits prescribed for regular employee :—

- (a) *Ex gratia* payment @21 days emoluments (Basic pay, D.A, I.R., if any) for each completed year of service or the monthly emoluments at the time of retirement multiplied by balance months of service left before the normal date of retirement, whichever is less, for any period of residual service less than a year, benefits should be assessed proportionately.
- (b) The balance in the P.F. account payable as per the CPF regulation
- (c) Cash equivalent of accumulated earned leave as per the rules of the enterprise
- (d) Gratuity as per the Gratuity Act or Gratuity Scheme applicable to the employees of the enterprise.
- (e) Any other statutory dues payable to the employees as per rules of the enterprise.

Employees would have to opt for Voluntary Separation Scheme within one month from the date of offer and application for Voluntary Separation Scheme cannot be withdrawn

after its acceptance is communicated by the competent authority. Further *ex gratia* payment at the rate of twenty one (21) days salary (pay, D.A., I.R) last drawn for every completed year of service. This compensation will be in addition to gratuity and other statutory dues as admissible on the date of retirement. For computing completed year of service, any period exceeding three months in a year will be counted as one year which are not disputed by the management. The 2nd party workman is dead, his legal heir son has appeared and has been examined as W.W. 1, who has deposed that his father was retired from service on Voluntary Separation Scheme on dated the 16th January 2004 although he had made application for V.S.S. on dated the 31st January 2002, his date of superannuation was on dated the 30th April 2009. As per agreement he was to get retirement dues within 60 days from the date of retirement but except E.P.F. dues he was not given any retirement dues/benefits by the O.S.R.T.C. During cross examination he has categorized that he had no knowledge regarding any recovery amount of Rs. 1,66,906 from his father in view of any proceeding against him. He was also not in a position to say that if his father had refunded that money to the Corporation or not.

14. The specific stand taken by the management is that as per model Voluntary Separation Scheme the 2nd party is entitled to get a sum of Rs.1,61,000. But as per the provision of scheme the employee is to get his dues after clearing the liability of the Corporation. On due scrutiny, it was found that before release of Rs.1,66,906 payable to the 1st party, the Corporation is to get Rs.1,66,906 towards short fall of the amount during the continuance of service the 2nd party. So the 2nd party is not entitled to get any dues from the Corporation. Admittedly the total grievance of 2nd party is for non-payment of arrear dues amounting to Rs.1,61,000 regarding outstanding Rs.1,66,906 against the 2nd party the management has filed series of documents i.e. Exts. A to Z, the copy of order and letters addressed to the 2nd party workman late Judhistir Sahu regarding punishment imposed during his tenure as Conductor for carrying luggage's and passengers without tickets on different occasions and has been fined at the spot and accordingly the management claimed that as per the documents the company is entitled for recovery of Rs.1,66,906 which the workman has not paid. M.W.1 during his evidence in the court has deposed that the recovery of Rs.1,66,906 is against short fall and M.V. fine. But unfortunately regarding short fall and M.V. fine the proceedings against the 2nd party have not been filed. It is also admitted that the acknowledgement receipt are not available. The explanation if any given by the 2nd party has not been filed. Regarding any enquiry conducted against the workman M.W.1 is silent. He also could not say when the short fall recovery was started against the workman. He has admitted that for short fall there has been no recovery from the workman since all recovery are deducted from his salary. He failed to say that why the amount has not been recovered from the salary of the workman during his service period although his M.V. fine were made at the spot of inspection. He also could not say why the M.V. fine has not been recovered from the salary of the workman. This apart the management has failed to explain through evidence as to what made them not to enquire or reject the application made by the workman within the stipulated period although the workman applied for retirement under Voluntary Separation Scheme during 2002 and all of a sudden he was ordered for retirement from his service on dated the

16th January 2004. In the circumstances, I am of the considerate view after scrutiny of the evidence both oral and documentary on record in proper prospective of the case that the action of the management in retiring the workman under Voluntary Separation Scheme with effect from dated the 16th January 2004 is illegal, not justified and the workman is entitled to get the relief as claimed. Accordingly both the issues are decided positively in favour of the 2nd party workman.

HENCE ORDERED

The action of the management of O.S.R.T.C. in retiring Shri Judhistir Sahu, Conductor under the V.S.S. with effect from dated the 16th January 2004 and not paying him salary or the benefits of the said scheme till date is not legal and justified. He is entitled to get the gratuity and other statutory dues as admissible on the date of retirement. The management is directed to pay the same, except P.F. amount which the workman has already received, with 7% interest from the date of entitlement till the date of payment in favour of the legalheir of the decease workman.

Dictated and corrected by me.

Smt. V. Jayashree

10-2-2015

Presiding Officer

Industrial Tribunal, Rourkela

Smt. V. Jayashree

10-2-2015

Presiding Officer

Industrial Tribunal, Rourkela

By order of the Governor

M. NAYAK

Under-Secretary to Government